(2)

No. 94-2069

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In The

Supreme Court of the United States

October Term, 1995

SPECTRAMED, INC.,

Petitioner,

v.

BAXTER HEALTHCARE CORPORATION and UTAH MEDICAL PRODUCTS, INC.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Should certiorari be granted in a case where the United States Court of Appeals for the Federal Circuit properly interpreted the District Court's Judgment that there was not a declaration of mistrial, and where the District Court's Order and the Court of Appeals' interpretation thereof affect no one other than the parties to the instant case, and where other issues in the instant case, including patent infringement, patent validity and appropriate preservation of answers to special jury interrogatories will be properly resolved upon remand to the District Court?

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No. 94-2069

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v.

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Petition For Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Baxter Healthcare Corporation and Utah Medical Products, Inc. respectfully submit this Brief in Opposition to the Petition For Writ of Certiorari filed by Petitioner Spectramed, Inc. seeking to review the decision rendered by the United States Federal Circuit Court of Appeals in this matter on March 17, 1995.

OPINIONS BELOW

Petitioner has attached copies of the opinion of the United States Court of Appeals for the Federal Circuit in its appendix (hereinafter "Pet. App. ___") at Pet. App. A 1. The opinion is reported at *Baxter Healthcare Corp. v. Spectramed, Inc.*, 49 F.3d 1575 (Fed. Cir. 1995). The Final Judgment of the United States District Court for the Central District of California, which was the subject of appeal to the Federal Circuit, is unreported and attached by Petitioner at Pet. App. B. Petitioner has likewise attached Civil Minutes and Tentative Rulings On Law and Motion matters and Reporter's Transcripts of Proceedings, dated February 19 and 23, 1993 and March 2 and 3, 1993 at Pet. App. C, Pet. App. D, Pet. App. E and Pet. App. F. Separate reference is made herein to additional appendices of Respondents as ("Resp. App. ___").

JURISDICTION

The Judgment of the United States Court of Appeals for the Federal Circuit was entered on March 17, 1995. Pet App. A 1-26. The Petition for Writ of Certiorari was filed on June 14, 1995. This Court has jurisdiction to review cases in the Court of Appeals based upon 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The facts of the instant case and its procedural posture are correctly stated in the opinion of the United

States Court of Appeals for the Federal Circuit. *See* Pet. App. A 2-12.

REASONS FOR DENYING THE WRIT

I. THIS IS NOT THE TYPE OF CASE THAT IS APPROPRIATE FOR SUPERVISORY REVIEW BY THE UNITED STATES SUPREME COURT.

The one thing that is clear from Petitioner's otherwise confusing Petition for Writ of Certiorari is that there is nothing in the Petition that warrants review by this Court.[1] Aside from its interlocutory posture, which by itself justifies denial of the Petition, the instant case involves nothing more than a Court of Appeals' interpretation of the District Court's Judgment concerning whether or not the District Court did or did not declare a mistrial. Moreover, the District Court's Judgment and the Federal Circuit Court of Appeals' interpretation of that Judgment affect no one other than the parties to the instant case.[2]

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[1] This Court receives "nearly 7,000 petitions for certiorari every Term, and can grant only a tiny fraction of them. A high degree of selectivity is thereby enjoined upon [this Court] in exercising [its] certiorari jurisdiction, and [this Court's] Rule 10 embodies the standards by which [it] decide[s] to grant review." *Hubbard v. United States*, ___ U.S. ___, 115 S. Ct. 1754, 1767 (1995) (Rehnquist, C.J., dissenting). This Court's Rule 10 clearly states that petitions for writ of certiorari "will be granted only when there are special and important reasons therefor." Sup. Ct. R. 10. Petitioner fails to sufficiently demonstrate that this case is of the type contemplated by Rule 10.

[2] The principal basis upon which Petitioner relies to assert a right to obtain supervisory review by this Court is that "the District Court declared a mistrial and, at all times, adhered to

II. PETITIONER'S CITED AUTHORITIES DO NOT SUPPORT THE PETITION FOR WRIT OF CERTIORARI IN THE INSTANT CASE.

Petitioner mistakenly relies on *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800 (1988) and *American Airlines, Inc. v. Lockwood*, ___ U.S. ___, 115 S. Ct. 2274 (1995), as authority for this Court's review to "correct a substantial and serious departure by a lower court from normal federal procedure." Pet. Br. at 14. However, neither of the cases relied upon by Petitioner bears any remote similarity to the instant case.

The *Christianson* decision involved conflicting decisions between the Seventh Circuit and the Federal Circuit, where both disavowed authority to review the decision of the District Court below.[3] Such circumstances do not exist in the instant case.

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that Declaration . . . . " Pet. Br. at 5. However, the most that can be said regarding "mistrial" is that it was considered as a possible alternative which was later abandoned in favor of acknowledging certain unanimous jury findings, while entering judgment on the basis of others. Pet. App. A 15-16. Thus, the District Court's Final Judgment was anything but "adherence" to a supposed declaration of mistrial. Rather, the Final Judgment entered clearly demonstrates a complete rejection of any notion that the jury findings were nullified or legally evaporated. Pet. App. B 2-3. In summary, any issue arising out of the alleged declaration of mistrial in the instant case is, by necessity, limited in application to the parties herein.

[3] This Court granted certiorari in *Christianson* primarily to resolve the dispute between the Court of Appeals for the Seventh and Federal Circuits. Such a split in authorities between circuit courts is a circumstance expressly referenced in Sup. Ct. R. 10.1(a) as justifying consideration by this Court. Indeed, Rule 10 provides that grant of certiorari is appropriate "[w]hen a

Petitioner also mistakenly relies on this Court's recent grant of certiorari in *American Airlines*, to review the Federal Circuit's decision in *In re Lockwood*, 50 F.3d 966 (Fed. Cir. 1995),[4] as a basis for granting its Petition. The petition in *American Airlines*, however, only raised the issue of whether there is a right to a jury trial under the Seventh Amendment of the United States Constitution when the sole claim to be tried is a claim under the declaratory judgment act to have a patent declared invalid. In contrast, the instant Petition does not even reference issues arising out of such fundamental and important constitutional concerns.[5]

III. THE DECISION BELOW IS CONSISTENT WITH APPROPRIATE JUDICIAL EXERCISE OF AUTHORITY TO PRESERVE SOUND PORTIONS OF JURY VERDICTS FOR ESTABLISHMENT OF THOSE ISSUES THAT ARE RESOLVED.

The crux of Petitioner's entire argument is that the mere utterance of the term "mistrial" by a district court

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United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter". Sup. Ct. R. 10.1(a).

[4] It should be noted that it appears *Lockwood* will not be considered by this Court since the patentee therein has sought to withdraw its jury demand and has also moved this Court to dismiss its review of the case as moot. 50 PATENT, TRADEMARK & COPYRIGHT JOURNAL (BNA), No. 1234, pp. 200-01 (June 22, 1995).

[5] That this Court granted certiorari to review *In re Lockwood* is not surprising in that the right to a jury trial is a fundamental constitutional guarantee and must be "jealously guarded by the courts." *See In re Lockwood*, 50 F.3d at 970 (citing *Jacob v. City of New York*, 315 U.S. 752, 753 (1942)).

somehow forces, without further alternative, the nullification of an entire trial. Not so. As succinctly stated by the Court of Appeals for the Federal Circuit:

> Although the district court unquestionably had the authority to declare a mistrial and order a new trial, there was no mention of a mistrial (or new trial) in the final judgment. Instead the district court disposed of the case by ruling on the parties' motions. We therefore conclude that the above-mentioned statement was merely a statement of intent post-trial of the district court, which, on more deliberate consideration, was not acted upon. *See Wahpeton Canvas Co.*, 870 F.2d at 1555 n.17, 10 USPQ2d at 1210 n.17. Accordingly, the trial judge's statement had no legal effect on the special verdict.

Pet. App. A 15. The Court of Appeals' conclusion is amply supported in the Record in the District Court.[6]

Accordingly, the District Court clearly did not declare that unanimous jury findings "legally evaporated" as asserted by Petitioner. Rather, consistent with

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[6] The District Court, in discussing the proposed judgment with counsel, stated:

> . . . [T]he Court is of the view that the claims for invalidity that were unanimously adjudicated can be the subject of judgment, that we need to confer about what kind of judgment, if any, can be entered that would embody these rulings and essentially draw the matter to partial adjudication, if you will, so as to take the case as far as it can go with regard to this stage of the proceedings.

Resp. App. A 2. From this passage it is clear that the District Court neither believed nor intended that the jury findings or the entire trial became a nullity.

appropriate judicial exercise of authority to preserve sound jury verdicts, the Court properly gave effect to a portion of the unanimous findings of the jury by entering judgment thereon.[7] *See* Pet. App. B 2-3.

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[7] *See Quaker City Gear Works, Inc. v. Skil Corp.*, 747 F.2d 1446, 1453 (Fed. Cir. 1984), *cert. denied*, 471 U.S. 1136 (1985) (holding that "[w]here a special verdict does not contain one or more answers requested . . . . It is 'a special verdict' to the extent findings are made . . . . ") If, as Petitioner contends, the jury findings "legally evaporated" due to the District Court's invocation of some mystical "mistrial" incantation, there would be no way for the District Court to then proceed to enter judgment on unanimous jury findings. Thus, Petitioner's claim that a mistrial was decreed erroneously mischaracterizes the District Court's Final Judgment and contradicts appropriate judicial conduct of preserving sound portions of jury verdicts.

CONCLUSION

On the basis of the foregoing points and authorities, Respondents respectfully submit that the Petition for Writ of Certiorari herein should be denied in all respects.

Respectfully submitted,

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Dated: July 17, 1995

APPENDIX A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE ALICEMARIE H. STOTLER,
JUDGE PRESIDING

BAXTER HEALTHCARE PRODUCTS,	)	
Plaintiff,	)	
vs.	)	No. CV 89-131-AHS
SPECTRAMED, INC.,	)	
Defendant.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

Tuesday, March 2, 1993

Kathleen J. Haaland, CSR
Official Court Reporter
412 United States Courthouse
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March 2, 1993, Page 34, lines 15-23:

. . . [T]he Court is of the view that the claims for invalidity that were unanimously adjudicated can be the subject of judgment, that we need to confer about what kind of a judgment, if any, can be entered that would embody these rulings and essentially draw the matter to partial adjudication, if you will, so as to take the case as far as it can go with regard to this stage of the proceedings.